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RECEIVED: AUG 19 2008

August 19, 2008

Via Fax (212) 805-0426

Honorable Laura Taylor Swain, USDJ  
 United States District Court  
 Southern District of New York  
 500 Pearl Street, Chambers  
 New York, NY 10007

**MEMO ENDORSED**

IT IS ORDERED that counsel to whom this Memo Endorsement is sent is responsible for faxing or otherwise delivering promptly a copy to all counsel and unrepresented parties and filing a certificate of such service within 5 days from the date hereof. Do not file such certification to Chambers.

Re: Fagan v. Republic of Austria et al, 08-cv-6715 (LTS)(DFE)

Honorable Judge Swain:

Copies mailed/faxed to pro se PLA  
 Chambers of Judge Swain 8-19-08

I am the Plaintiff Pro Se in the above referenced matter.

At 8:35 pm last night, after my response to Mr. Weiner's letter to Court, I received Mr. Harnik's letter which referenced a "3-way telecon with your (honor's) law secretary, Sean Young". The Court should note that prior to last night's letter, I received no communications (by email or call) from Mr. Harnik indicating he was counsel for Defendant Austrian National Bank or requesting an extension of time. Defendant Austrian National Bank's time to respond expired yesterday.

As per my letter to the Court yesterday, related to Defendant Generali, I submit that Defendant Austrian National Bank should submit their response to Plaintiff's complaint by Sept. 15, 2008.

In light of the multiple letters, the "telecon" and the issues raised, I submit that a Rule 16 Initial and/or Scheduling Conference might be of assistance to the Court and the parties to address:

- A briefing schedule related to Defendants' response to Plaintiff's complaint;
- Plaintiff's Motion for (i) Preservation of Evidence & Documents, including electronically stored information, (ii) Limited Jurisdictional Discovery and (iii) other relief; and
- A time limitation for any Motion for Intervention from persons (including other lawyers from my former team and others) who contacted me and claim to be affected by Defendants' actions and claims interests that might allow Rule 24 intervention.

In view of the foregoing, I respectfully urge the Court to consider convening a Rule 16 Initial and/or Scheduling Conference at the Court's earliest convenience.

Thank you for the Court's consideration in this regard.

Respectfully submitted,

*Edward D. Fagan*  
 Edward D. Fagan

EDF/lsf

Cc: Robert A. Weiner Esq. - Via Fax # (212) 547-5444

Stephen M. Harnik Esq. - Via Fax # (212) 867-8120

James F. Lowy Esq. - Via Fax # (813) 288-9525

Kaprun Cooperating Counsel and Victim, Survivor & Family Representatives

*The parties may take up items b. and c. with Judge Swain to whom this pro se matter is now referred for general Pretrial Management.*  
**SO ORDERED.**

NEW YORK, NY

*Laura Taylor Swain*  
 LAURA TAYLOR SWAIN

Aug 19, 2008

UNITED STATES DISTRICT JUDGE